

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

SB 752 - HB 892

March 17, 2017

SUMMARY OF BILL: Enacts the *Tennessee Natural Marriage Defense Act* and declares it is the policy of the State to defend natural marriage as recognized by the people of Tennessee in the State Constitution. Further declares marriage in Tennessee remains between one man and one woman and any court decision purporting otherwise is unauthoritative, void, and of no effect in Tennessee.

Authorizes the Speaker of the House of Representatives and the Speaker of the Senate to employ legal counsel to defend the act if the Attorney General declines to defend the act pursuant to Tenn. Code Ann. § 8-6-109(b)(9).

Prohibits any state or local agency from giving force or effect to any court order that has the effect of violating Tennessee's laws protecting natural marriage.

Prohibits any state or local agency from levying upon the property or arresting the person of any government official or individual who does not comply with any court order that is in contradiction to natural marriage in Tennessee.

Requires county clerks to electronically submit all marriage license applications to the Office of Vital Records (Vital Records) upon receiving a completed application. Requires Vital Records to determine whether the license being applied for would entitle the applicants to enter into a lawful or unlawful marriage under Article XI, § 18 of the Constitution of Tennessee. If the license would allow for a lawful marriage, then a license shall be issued. If the license would allow for an unlawful marriage, then the application shall be denied.

ESTIMATED FISCAL IMPACT:

Decrease State Revenue – Exceeds \$5,700/FY17-18 and Subsequent Years

Increase State Expenditures – \$170,500/FY17-18

\$157,300/FY18-19

\$104,900/FY19-20 and Subsequent Years

Decrease Local Revenue – Exceeds \$7,600/FY17-18 and Subsequent Years

Other Fiscal Impact – To the extent the Attorney General declines to defend the act, and the Speaker of the Senate and the Speaker of the House of Representatives elect

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to employ the services of legal counsel to defend the act, the increase in state expenditures is estimated to exceed \$100,000.

The provisions of the bill could jeopardize federal funding if it is determined the state is noncompliant with federal law. The Bureau of TennCare reports that if someone is denied coverage that would otherwise be eligible by virtue of being in a same-sex marriage, and such action is considered noncompliant with federal law, then the Bureau's federal funding, approximately \$7,163,104,200 in FY17-18, could be in jeopardy. The Department of Human Services reports that the Supplemental Nutrition Assistance Program and Temporary Assistance for Needy Families funds the department receives could also be in jeopardy. These funds total over \$2 billion.

Assumptions:

- The bill declares that it is the policy of Tennessee to defend "natural marriage" as it is defined in Article XI, § 18 of the Constitution of Tennessee. The bill further declares that any court decision, including a decision by the Supreme Court of the United States, purporting to strike down "natural marriage" is unauthoritative, void, and of no effect in Tennessee.
- The bill will result in marriages of same-sex couples being null and void in Tennessee, whether married in Tennessee or in another state; and will also result in same-sex married couples being denied services offered to different-sex married couples.

Decrease in marriage license revenue:

- The bill will result in fewer marriage licenses being issued in Tennessee. Specifically, marriage licenses issued to same-sex couples.
- Data from the 2010 census show 10,898 same-sex couples in Tennessee in 2010. It is assumed for purposes of this fiscal note that the number of same-sex couples living in Tennessee will remain constant.
- A recent study by the Williams Institute on Sexual Orientation and Gender Identity Law and Public Policy indicates that approximately 45 percent of same-sex couples were married as of October 2015. (Gates, GJ, Brown, TNT. 2015. Marriage and Same-Sex Couples after *Obergefell*. Williams Institute, UCLA School of Law.) It is assumed that at least 30 percent (3,269.4) of same-sex couples in Tennessee are married.
- The legislation will result in the remaining 7,629 same-sex couples (10,898 couples – 3,269 couples already married) that are not married being prohibited from being married in Tennessee.
- For each marriage license issued, the state receives a \$15 privilege tax and local governments receive the following:
 - County privilege tax - \$5.00
 - Local option tax - \$5.00
 - County clerk fee - \$10.00
- It is assumed that a minimum of five percent ($7,629 \times 0.05 = 381.45$) of the 7,629 unmarried same-sex couples would have sought a marriage license each year had the legislation not prohibited the issuance of the license.

- It is assumed that the bill will result in a recurring decrease in state revenue exceeding \$5,715 [381 couples x \$15.00] as well as a recurring decrease in local revenue as follows:
 - A recurring decrease exceeding \$1,905.00 for county privilege taxes (381 couples x \$5.00);
 - A recurring decrease exceeding \$1,905.00 for local option taxes (381 couples x \$5.00); and
 - A recurring decrease exceeding \$3,810.00 for county clerk fees (381 couples x \$10.00).
- The total recurring decrease in local revenue is estimated to exceed \$7,620 (\$1,905 county privilege tax + \$1,905 local option tax + \$3,810 county clerk fees).

Office of Vital Records:

- The legislation requires county clerks to electronically submit all marriage license applications to Vital Records upon receiving a completed application.
- The legislation requires Vital Records to determine whether the license being applied for would entitle the applicants to enter into a lawful or unlawful marriage under Article XI, § 18 of the Constitution of Tennessee. If the license would allow for a lawful marriage, then a license shall be issued. If the license would allow for an unlawful marriage, then the application shall be denied.
- Vital Records is under the Department of Health, and Vital Records currently receives marriage certificates from county clerks. However, the clerks have until the tenth day of the following month to send the certificates to Vital Records, and the certificates can be sent via postal mail. The legislation will not only require Vital Records to receive the applications electronically, but will also give Vital Records decision making authority, which it does not currently possess.
- Vital Records has a new system, Vital Records Information System Management (VRISM), to manage records, but it is not currently equipped to handle marriage certificates or applications.
- VRISM could be adapted to handle marriage applications, but Vital Records will need additional personnel to handle the workload until VRISM can be adapted.
- Vital Records will need three vital records information assistants to perform this work in FY17-18 and FY18-19 at which time VRISM will be able to handle marriage applications. After VRISM begins handling marriage applications, Vital Records will only need two positions.
- The salary for a vital records information assistant is \$30,396. Each position will increase recurring expenditures by \$42,365 [\$30,396 salary + (\$30,396 x 0.0894) benefits + (\$30,396 x 0.0765) FICA + \$6,926.76 insurance].
- Each position requires \$10,060 in recurring expenditures (\$1,400 communications + \$4,100 office space + \$600 supplies + \$3,960 professional services) and \$4,400 in one-time expenditures (\$1,600 computer + \$100 printer + \$2,700 office furniture).
- The legislation will increase state expenditures by \$170,475 in FY17-18 [(\$42,365 recurring + \$10,060 recurring + \$4,400 one-time) x 3 positions]; by \$157,275 [(\$42,365 recurring + \$10,060 recurring) x 3 positions] in FY18-19; and by \$104,850 [(\$42,365 recurring + \$10,060 recurring) x 2 positions] in FY19-20 and subsequent fiscal years.

General Assembly hiring legal counsel:

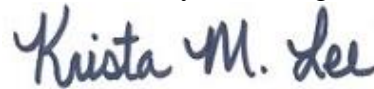
- The legislation authorizes the Speaker of the House of Representatives and the Speaker of the Senate to employ legal counsel to defend the act if the Attorney General and Reporter decline to defend the act pursuant to Tenn. Code Ann. § 8-6-109(b)(9).
- Fiscal Review staff cannot reasonably determine the number of lawsuits that could be filed to challenge the legislation, but it is assumed that at least one lawsuit would be filed.
- The cost of defending such a lawsuit cannot be reasonably determined due to multiple, unknown factors. However, it is reasonable to assume that any lawsuit would increase expenditures by at least \$100,000 for legal fees and expenses, which would be borne by the General Assembly.
- The Administrative Office of the Courts reports that any lawsuits initiated as a result of the legislation can be accommodated within the courts' existing resources.

Federal funding:

- The Bureau of TennCare (TennCare) reports that the legislation would result in additional administrative costs because TennCare would have to track married persons and determine whether they are in a different-sex or same-sex marriage.
- TennCare would need to make changes to its system to track these individuals. TennCare could not reasonably estimate the extent of the administrative costs.
- It is assumed that TennCare currently budgets for such system changes and that any impact can be accommodated within TennCare's existing resources.
- TennCare also reports that if someone is denied coverage that would otherwise be eligible by virtue of being in a same-sex marriage, and such action is considered noncompliant with federal law, then TennCare's federal funding, approximately \$7,163,104,200 in FY17-18, could be in jeopardy.
- The Department of Human Services (DHS) reports that the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) funds received by the department could also be in jeopardy. These funds total over \$2 billion.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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